

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IMMANUEL C. PRICE
G-51247,

Plaintiff,

v.

DEPUTY ALEXANDRU GALIU,

Defendants.

Case No.: 16CV412 BEN (PCL)

ORDER:

**1) GRANTING PLAINTIFF'S
MOTION TO PROCEED *IN FORMA
PAUPERIS* PURSUANT TO 28 U.S.C.
§ 1915(a) (ECF No. 2)**

AND

**2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF SUMMONS
AND COMPLAINT PURSUANT TO
28 U.S.C. § 1915(d)
AND Fed. R. Civ. P. 4(c)(3)**

Immanuel C. Price ("Plaintiff"), currently incarcerated at California State Prison - Los Angeles County located in Lancaster, California, and proceeding pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims that his constitutional rights were violated when he was housed at the Richard J. Donovan Correctional Facility.

1 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead,
 2 he has filed two Motions to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C.
 3 § 1915(a) (ECF Nos. 2).

4 **II. Plaintiff’s Motion to Proceed IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the
 6 United States, except an application for writ of habeas corpus, must pay a filing fee of
 7 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
 8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 9 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if a prisoner, like Plaintiff, is granted
 11 leave to proceed IFP, he remains obligated to pay the entire fee in “increments,” *see*
 12 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action
 13 is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
 14 844, 847 (9th Cir. 2002).

15 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”),
 16 a prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund
 17 account statement (or institutional equivalent) for the prisoner for the six-month period
 18 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v.*
 19 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the
 20 Court assesses an initial payment of 20% of (a) the average monthly deposits in the account
 21 for the past six months, or (b) the average monthly balance in the account for the past six
 22 months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1);
 23 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then collects
 24

25
 26 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay
 27 an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,
 District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee
 is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 subsequent payments, assessed at 20% of the preceding month's income, in any month in
 2 which the prisoner's account exceeds \$10, and forwards those payments to the Court until
 3 the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

4 In support of his IFP Motions, Plaintiff has submitted a certified copy of his trust
 5 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*,
 6 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account statement, but it shows
 7 that he has a current available balance of zero. *See* 28 U.S.C. § 1915(b)(4) (providing that
 8 "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil
 9 action or criminal judgment for the reason that the prisoner has no assets and no means by
 10 which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.
 11 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based
 12 solely on a "failure to pay . . . due to the lack of funds available to him when payment is
 13 ordered.").

14 Therefore, the Court **GRANTS** Plaintiff's Motions to Proceed IFP, (ECF Nos. 2),
 15 and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire
 16 \$350 balance of the filing fees mandated will be collected by the California Department of
 17 Corrections and Rehabilitation ("CDCR") and forwarded to the Clerk of the Court pursuant
 18 to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

19 **III. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

20 Notwithstanding Plaintiff's IFP status or the payment of any partial filing fees, the
 21 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
 22 and by those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused
 23 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 24 conditions of parole, probation, pretrial release, or diversionary program," "as soon as
 25 practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
 26 statutes, the Court must sua sponte dismiss complaints, or any portions thereof, which are
 27 frivolous, malicious, fail to state a claim, or which seek damages from defendants who are

immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

All complaints must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

“When there are well-pleaded factual allegations, a court should assume their veracity, and then determine whether they plausibly give rise to an entitlement to relief.” *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (“[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

However, while the court “ha[s] an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

As currently pleaded, the Court finds allegations in Plaintiff’s Complaint which are sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and

1 1915A(b). Accordingly, the Court will direct the U.S. Marshal to effect service on
2 Plaintiff's behalf. *See* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve
3 all process, and perform all duties in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) ("[T]he court
4 may order that service be made by a United States marshal or deputy marshal . . . if the
5 plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.").

6 **III. Conclusion and Order**

7 Good cause appearing, **IT IS HEREBY ORDERED** that:

8 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.
9 2) is **GRANTED**.

10 2. The Secretary of the CDCR, or his designee, shall collect from Plaintiff's
11 prison trust account the \$350 filing fee owed in this case by collecting monthly payments
12 from the account in an amount equal to twenty percent (20%) of the preceding month's
13 income and forward payments to the Clerk of the Court each time the amount in the account
14 exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE
15 CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS
16 ACTION.

17 3. The Clerk of the Court is directed to serve a copy of this Order on Scott
18 Kernan, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
19 942883, Sacramento, California, 94283-0001.

20 **IT IS FURTHER ORDERED** that:

21 4. The Clerk is **DIRECTED** to issue a summons as to Plaintiff's Complaint
22 (ECF No. 1) upon Defendants and forward it to Plaintiff along with blank U.S. Marshal
23 Form 285s for each named Defendant. In addition, the Clerk is directed to provide Plaintiff
24 with a certified copy of this Order and a certified copy of his Complaint (ECF No. 1) and
25 the summons so that he may serve each named Defendant. Upon receipt of this "IFP
26 Package," Plaintiff is directed to complete the Form 285s as completely and accurately as
27 possible, and to return them to the United States Marshal according to the instructions

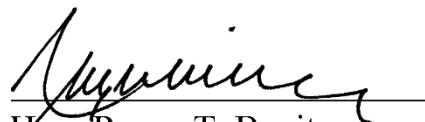
1 provided by the Clerk in the letter accompanying his IFP package.

2 5. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the
3 Complaint and summons upon the named Defendants as directed by Plaintiff on the USM
4 Form 285s. All costs of service will be advanced by the United States. *See* 28 U.S.C. §
5 1915(d); Fed. R. Civ. P. 4(c)(3).

6 6. Defendants are thereafter **ORDERED** to respond to Plaintiff's Complaint
7 within the time provided by the applicable provisions of Federal Rule of Civil Procedure
8 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to
9 "waive the right to reply to any action brought by a prisoner confined in any jail, prison, or
10 other correctional facility under section 1983," once the Court has conducted its sua sponte
11 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a
12 preliminary determination based on the face on the pleading alone that Plaintiff has a
13 "reasonable opportunity to prevail on the merits," the defendant is required to respond).

14 7. Plaintiff must serve upon the Defendants or, if appearance has been entered
15 by counsel, upon Defendants' counsel, a copy of every further pleading or other document
16 submitted for consideration by the Court. Plaintiff must include with the original paper to
17 be filed with the Clerk of the Court, a certificate stating the manner in which a true and
18 correct copy of the document was served on the Defendants, or counsel for Defendants,
19 and the date of that service. Any paper received by the Court which has not been properly
20 filed with the Clerk, or which fails to include a Certificate of Service, may be disregarded.

21 Dated: February 29, 2016

22 
23 Hon. Roger T. Benitez
24 United States District Judge
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